

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

In RE: JOSEPH L. LAFRANCE

Debtor

Case No: 02-42450-RJB
Chapter 13MEMORANDUM IN SUPPORT OF
MOTION FOR RECONSIDERATION AND
TO ALLOW LATE FILING OF APPEAL
ON GROUNDS OF EXCUSABLE NEGLECT
(Fed. R. Bankr. P. 8002(e))

The time for filing a notice of appeal is set forth in Fed. R. Bankr. P. 8002, which requires that the notice of appeal be filed within ten days after the date the order is entered. Fed. R. Bankr. P. 8002(a). Notwithstanding Fed. R. Bankr. P. 8002@) empowers a bankruptcy court to permit a late filing of a notice of appeal if the party's failure to comply with an earlier deadline was the result of "excusable neglect".

Francis Lafayette filed a notice of appeal on June 24, 2004, four days past the deadline. On June 30, 2004 the Court entered an order dismissing the appeal as untimely.

Francis Lafayette respectfully requests the Court for reconsideration for the following reasons.

On May 3, 2003 Francis Lafayette was hospitalized at the

Wing Memorial Hospital, Palmer, MA with in a critical diabetic condition. This required constant transfusions of insulin. Upon release from the hospital medication was prescribed by Francis Lafayette, attending physician which was suppose to control the diabetic condition. Following the admission Francis Lafayette faithfully took the prescribed medication, however, on June 24, 2004 Francis Lafayette's attending physician doubled the strength

of the diabetic medication, as the original prescription was not sufficient to control Francis Lafayette's diabetic condition. Tiredness or weakness, numbness or tingling in hands or feet and blurred vision are some of the known effects of uncontrolled diabetes. See Attached Exhibit "A".

On June 3, 2004 a second medical doctor gave diagnosis of Francis Lafayette concerning another medical matter as "polyneuropathy" and that this condition causes Francis Lafayette to unable to walk 200 feet without assistance. See Attached Exhibit "B".

To some extend the condition of polyneuropathy becomes worse as the diabetic condition goes out of control. As a result normal tasks such as walking and typing are extremely painful.

During the time period of the entry of the order which was June 10, 2004 to the date of the filing of the appeal June 24, 2004, Francis Lafayette was placed on an incorrect dosage of medication which was not sufficient to override the effects of diabetes. As a result Francis Lafayette was very ill with uncontrolled blood sugar and as a further result of the both illnesses Francis Lafayette did not file the appeal timely.

On June 24, 2004 was placed on a higher diabetic medication prescription which according his doctor should bring things more normal.

Francis Lafayette respectfully requests the Court to apply the doctrine of excusable neglect. The Bankruptcy Court should evaluate Francis Lafayette's conduct against several factors, including: (1) whether granting the delay will prejudice the

appeal; (2) the length of the four (4) day delay and its impact on efficient court administration; (3) whether the delay was beyond the reasonable control of the person whose duty it was to perform; (4) whether the person appealing acted in good faith and whether the failure to timely file the appeal resulted from negligence, indifference or culpable conduct.

Francis Lafayette's failure to timely file the appeal resulted from unanticipated illness which an insufficient medication was prescribed.

Respectfully


Francis Lafayette, J. D.

Francis Lafayette,
1024 Park Street
Post Office Box 1020
Palmer, MA 01069
(413) 283-7785

Certificate of Service

I, Francis Lafayette certify that I caused a copy of the foregoing pleading to be served upon the parties shown below by mailing a copy of the same, postage prepaid, first class mail to:

Denise M. Papalardo
Chapter 13 Trustee
Denholm Building
P. O. Box 16607
Worcester, MA 01601

UNITED STATES TRUSTEE
446 Main Street
14th Floor
WORCESTER, MA 01608

Joseph L. LaFrance
60 Saviles Street
Southbridge, MA 01550


Francis Lafayette, J. D.



Wing Memorial
Hospital and Medical Centers
A Member of
UMass Memorial Health Care

FOLLOW UP TO YOUR RECENT DIAGNOSTIC TESTS OR RECENT PROCEDURE(S)

DATE: 6-24-04

PATIENT: Francis Lafayette MR#

LAB TEST RESULTS: X-RAY RESULTS: MAMMOGRAM:

PAP SMEAR:

Prostate cancer - Gleason 6, but no cancer
Diabetes control: Not good -
Lip, not surprising, will
recheck in several months

BASED ON THIS INFORMATION:

NO FURTHER TESTS ARE REQUIRED AT THIS TIME

STAY ON YOUR CURRENT MEDICATION
CHANGE YOUR MEDICATION AS INDICATED: _____

ARRANGE FOR THE FOLLOWING: _____

SINCERELY:

Francis J. Lafayette

MD

WING MEDICAL CENTER AT:

- BELCHERTOWN, tel: 523-5118 fax: 223-6158
- 20 Daniel Slays Highway, Belchertown, MA 01007
- LUDLOW, tel: 589-0583 fax: 583-5239
- 34 Hubbard Street, Ludlow, MA 01056
- MONSON, tel: 267-9101 fax: 267-4606
- 2 Main Street, Monson, MA 01057

- PALMER, tel: 284-5400 fax: 284-5194
- 40 Wright Street, Palmer, MA 01069
- WILLIABHAM, tel: 596-3455 fax: 596-2961
- 2344 Boston Road, Wilbraham, MA 01095
- Griswold Center, tel: 284-5285 fax: 284-5384
- 40 Wright St., Palmer, MA 01069

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750-1014 11/03

01027

TO BE COMPLETED BY HEALTH CARE PROVIDER

CLINICAL DIAGNOSIS: Polyneuropathy (Required)DURATION (circle one): Temporary
If temporary, please state # of months Permanent

PLEASE CHECK ALL THAT APPLY:

 Unable to walk 200 feet without assistance (clinical diagnosis **MUST** be completed) Legally Blind* (Cert. Of Blindness may substitute for professional certification) (*automatic loss of license) Chronic Lung Disease

Please state FEV1 Test results _____ O2 saturation with minimal exertion _____

 Use of Portable Oxygen? Yes _____ No _____ Cardiovascular DiseaseAHA Functional Classification (circle one): I II III IV*
(*automatic loss of license) Arthritis (please state type, severity, and location) Loss of or permanent loss of use of a limb Description of functional disability _____HEALTHCARE PROVIDER **MUST** CHECK ONE:

In my professional opinion and to a reasonable degree of medical certainty:

The above condition, or any other medical condition of which I am aware, **WILL NOT IMPAIR** the safe *operation of a motor vehicle.*

The person applying for this permit is **NOT** medically qualified to operate a motor vehicle safely.

The medical condition as stated above is of such severity as to require a **COMPETENCY ROAD TEST**.

CERTIFICATION: (Please Print)

Michael B. Sorrell, M.D. DC 495
Healthcare Provider 10 New Street, Suite 2 Title Mass Board of Registration #
Address Springfield, Massachusetts 01104413-781-5550 6-3-04
Healthcare Provider's Signature
Date

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

In RE:

JOSEPH L. LAFRANCE

Debtor

Case No: 02-42450-HOB
Chapter 13

MOTION FOR RECONSIDERATION AND
TO ALLOW LATE FILING OF APPEAL
ON GROUNDS OF EXCUSABLE NEGLECT
(Fed. R. Bankr. P. 8002(c))

To the Honorable Henry J. Boroff, U.S. Bankruptcy Judge:

Now comes Francis Lafayette and moves the Court to

reconsider the ORDER dated June 29, 2004 dismissing the Notice of

Appeal of the Court's order of June 10, 2004 and to allow the
filing of appeal late. Filed with this motion is a memorandum in

support of this motion which sets forth facts sufficient to allow

a late notice because of excusable neglect pursuant to Fed. R.

Bankr. P. 8002(c).

Respectfully


Francis Lafayette, J. D.

Respectfully


Francis Lafayette
BBO# 282260
Post Office Box 1020
Palmer, MA 01069
(413) 283-7785

Certificate of Service

I, Francis Lafayette, J. D., certify that I caused a copy of
the foregoing motion to be served upon the parties shown below by
mailing a copy of the same, postage prepaid, first class mail to:

Denise M. Papalardo
Chapter 13 Trustee
Denholm Building
P. O. Box 16607
Worcester, MA 01601

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